

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000324-001 DT

03/01/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

BRADLEY J LAUGHLIN

GEORGE H SMITH

v.

ARIZONA STATE REGISTRAR OF
CONTRACTORS (001)
DAVID GARDNER CUSTOM BUILDING &
DESIGN INC (001)

MONTGOMERY LEE
DAVID GARDNER CUSTOM
BUILDING & DESIGN INC
PO BOX 32315
TUCSON AZ 85751

AZ REGISTRAR OF CONTRACTORS
OFFICE OF ADMINISTRATIVE
HEARINGS

MINUTE ENTRY

This administrative review action has been under advisement since January 5, 2004; the date the Real Party's in Interest answering memorandum and the supplemental affidavit from the Plaintiff were due. This decision is made within sixty (60) days as required by Rule 9.9, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Office of Administrative Hearings and the Registrar of Contractors.

Pursuant to A.R.S §12-910(e) this court may review administrative decisions in special actions and proceedings in which the State is a party:

The court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000324-001 DT

03/01/2004

The scope of review of an agency determination under administrative review places the burden upon the Plaintiff to demonstrate that the agency's decision was arbitrary, capricious, or involved an abuse of discretion.¹ The reviewing court may not substitute its own discretion for that exercised by the agency,² nor may it act as the trier of fact,³ but must only determine if there is any competent evidence to sustain the decision.⁴ This court may not function as "super agency" and substitute its own judgment for that of the agency where factual questions and agency expertise are involved.⁵

Plaintiff requested permission to submit additional evidence and this court granted that request and permitted Plaintiff to file the affidavit of Bradley J. Laughlin, the Plaintiff herein. This Court has considered and reviewed that affidavit consistent with the directions enunciated by the Arizona Court of Appeals in Shaffer v. Arizona Liquor Board.⁶

Plaintiff Laughlin had made application to the Residential Contractors Recovery Fund. Following a hearing held on February 6, 2003 the administrative law judge found that Plaintiff had failed to dispute the testimony of David Gardner (the Real Party in Interest) that Plaintiff knew Gardner was unlicensed at the time the parties entered into their contract (which gave rise to Laughlin's claim from the Recovery Fund).⁷ The administrative law judge, and the Registrar of Contractors, denied Plaintiff's request for reimbursement from the Recovery Fund based upon this finding. Plaintiff's affidavit clearly demonstrates that Plaintiff Laughlin did not know that David Gardner (dba David Gardner Custom Building & Design, Inc.) was an unlicensed contractor. This Court must conclude that had this evidence been submitted to the administrative law judge, this evidence is of such a nature that it would have affected or changed the decision of the administrative law judge or the agency.⁸

IT IS ORDERED granting the relief requested by the Plaintiff in their Administrative Review Action Complaint.

IT IS FURTHER ORDERED reversing the order of the administrative law judge, dated February 21, 2003, and the order of the Registrar of Contractors approving the administrative law judge's decision.

¹ Sundown Imports, Inc. v. Ariz. Dept. of Transp., 115 Ariz. 428, 431, 565 P.2d 1289, 1292 (App. 1977); Klomp v. Ariz. Dept. of Economic Security, 125 Ariz. 556, 611 P.2d 560 (App. 1980).

² Ariz. Dept. of Economic Security v. Lidback, 26 Ariz. App. 143, 145, 546 P.2d 1152, 1154 (1976).

³ Siler v. Arizona Dept. of Real Estate, 193 Ariz. 374, 972 P.2d 1010 (App. 1998).

⁴ Schade v. Arizona State Retirement System, 109 Ariz. 396, 398, 510 P.2d 42, 44 (1973); Welsh v. Arizona State Board of Accountancy, 14 Ariz. App. 432, 484 P.2d 201 (1971).

⁵ DeGroot v. Arizona Racing Com'n, 141 Ariz. 331, 336, 686 P.2d 1301, 1306 (App. 1984).

⁶ 197 Ariz. 405, 4 P.3d 460 (App. 2000).

⁷ Administrative Law Decision of February 21, 2003, at page 2, paragraph 5.

⁸ See Shaffer v. Arizona Liquor Board, *supra*.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000324-001 DT

03/01/2004

IT IS FURTHER ORDERED remanding this matter back to the Arizona Registrar of Contractors and the administrative law judge for a hearing on the amount of damages Plaintiff may be entitled to from the Recovery Fund.

IT IS FURTHER ORDERED that counsel for the Plaintiff shall lodge an order consistent with this opinion, and an application and affidavit for attorney's fees and costs with an appropriate order no later than March 26, 2004.